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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy

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Introduction

1. The Commission on Human Rights, at its fifty-second session, in its resolution 1996/49 of 19 April 1996, welcomed the work of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, and commended the Special Rapporteur for her analysis of violence against women in the family (E/CN.4/1996/53 and Add.2).

2. As already indicated in her previous report, the present report focuses on all forms of violence against women in the community. 1/ The Special Rapporteur would further like to draw the attention of the Commission to the report of her mission to Poland (24 May-1 June 1996) on the issue of trafficking and forced prostitution of women and girls (E/CN.4/1996/47/Add.1); to Brazil (15-28 July 1996) to study in depth the issue of domestic violence against women (E/CN.4/1996/47/Add.2); and to South Africa (9-18 October 1996) on the issue of rape in the community (E/CN.4/1996/47/Add.3). The Special Rapporteur would like once more to express her appreciation for the cooperation of the Governments concerned during her visits, enabling her to report to the Commission on Human Rights in a substantive and comprehensive manner on the issues concerned.

3. In 1997-1998, the Special Rapporteur hopes to visit the Western European or North American region to study issues relating to State violence against women, as well as the Asian and Middle Eastern regions. Finally, the Special Rapporteur is also planning to undertake a country visit to report on violence against women during times of armed conflict in the African region.

4. The Commission also has before it an addendum to the present report containing summaries of communications between the Special Rapporteur and Governments concerned on allegations of violence against women (E/CN.4/1997/47/Add.4).

5. Finally, the Special Rapporteur will present the Commission on Human Rights at its fifty-fourth session with brief follow-up reports to all her country visits carried out until then. Such reports would include information on the implementation of the Special Rapporteur's recommendations, as well as new developments in the countries concerned in connection with the issues studied. In addition, the need to carry out any follow-up missions would also be determined.

I. VIOLENCE IN THE COMMUNITY

6. Article 2 of the Declaration on the Elimination of Violence against Women (General Assembly resolution 48/104) states that "violence against women shall be understood to encompass, but not be limited to, the following ... physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution".

7. For most women, the community provides the contours for the enjoyment of social space. It determines the nature of their social interactions and the type of values that will condition their lives. Community is a social space

outside the family but not fully under the control of the State. It is the site for flourishing private organizations and intermediary associations which have an impact on the lives of women as part of their daily interactions. From neighbourhood associations to private corporations, religious groupings, trade unions and professional associations, the community provides the basis for what is now called civil society. Though ephemeral in concept, the community is also the site of a woman's social identity whether that identity is defined in secular, ethnic or religious terms.

8. The community may also be the site of restrictions on and regulations of female sexuality. In many instances, women and girl children are subjected to violence by their communities because of their sexuality and sexual behaviour. A key component of community identity, and therefore the demarcation of community boundaries, is the preservation of communal honour. Such honour is frequently perceived, by both community and non-community members, as residing in the sexual behaviour of the women of the community. Communities, therefore, "police" the behaviour of their female members. A woman who is perceived to be acting in a manner deemed to be sexually inappropriate by communal standards is liable to be punished. Such punishments range from eviction from the community to corporal punishment, such as flogging and stoning, and death. In many cases, the restrictions on women's sexuality, as defined by the community, are sanctioned by the State through the promulgation of laws and policies reflecting the communal values. In most communities, the option available to women for sexual activity is confined to marriage with a man from the same community. Women who choose options which are disapproved of by the community, whether to have a sexual relationship with a man in a non-marital relationship, to have such a relationship outside of ethnic, religious or class communities, or to live out their sexuality in ways other than heterosexuality, are often subjected to violence and degrading treatment. Single, widowed or divorced women living alone are often targeted by violence and rape in the community. Women, "unprotected" by a marriage union with a man, are vulnerable members of the community, often marginalized in community social practices and the victims of social ostracism and abuse.

9. Women's empowerment and economic independence are rarely recognized by societies where marriages are arranged and where sexuality is tightly controlled by communal mores and policing. The lack of choice with regard to lifestyle is closely linked to the lack of options available to women for economic autonomy within the community, whether in terms of earning power or resource distribution. Women without communal protection in the form of an approved marriage, and often without access to training or marketable skills, may be forced into prostitution or economically exploitative work to support themselves and their dependents. Those who seek work to strengthen their economic empowerment outside the domestic sphere or the immediate community, such as in free trade zones and other low-skilled labour-intensive areas, are often seen as being sexually available to men and therefore sexually promiscuous. Sexual harassment of women workers in these zones, travelling to and from work and in their workplace, is a commonplace occurrence. To strive to live and work outside the watchful gaze of the family and community is to risk becoming a target for male violent behaviour.

10. With regard to women's human rights, the term community is, therefore, a Janus-faced concept. On the one hand, the community is often the site for the

denial of women's rights. Whether in terms of the strictures of ethnic and religious communities, the social construction of marriage, discrimination in the workplace or educational institutions, or rape and sexual harassment in public spaces, the community may be the site for brutality, violence and discrimination against women. On the other hand, the community is often a nurturing space, which provides women with social support and solidarity, especially when they are seeking redress from the State.

11. Community organizations have often taken the lead in fighting violence against women and discrimination either by the State or other groups in civil society. It is the community which has often developed institutions to provide legal and psychological counselling to women, to advocate and defend women in the court system, to provide shelters and other forms of assistance to women victims, to accompany women to the police station and the courts to prevent them from being alienated by the criminal justice system. The community is often the buffer, the support which gives solidarity and strength to women victims of violence during their times of crisis.

12. The community is, therefore, the site for struggle between different visions, varying practices, and diverse social attitudes. It is where groups sympathetic to women's issues have to confront and expose those practices and attitudes which are demeaning or discriminatory towards women by raising awareness and mobilizing concerned people. In most societies such struggles are being conducted by individuals and groups interested in fostering human rights and women's empowerment. They are in the process of doing valiant service in an area still fraught with tension and contradiction. Their activities must be supported by the commitment of the international community to values and standards which have been enumerated in international instruments of human rights law.

II. INTERNATIONAL STANDARDS

13. The Special Rapporteur, in her earlier reports, has discussed in detail the framework of international and regional human rights law relating to violence against women, seeking to clarify the international obligations and standards which are pertinent for the elimination of violence against women (see E/CN.4/1995/42). In her report to the Commission on Human Rights at its fifty-second session (E/CN.4/1996/53 and Add.2), the Special Rapporteur reflected on these standards as they related to violence against women in the family.

14. Like violence against women in the family, violence against women in the community brings into focus the important question of State responsibility for non-State actors and private individuals. In the past, a strict interpretation of human rights law considered that the State is only responsible for its own actions or that of its agents and that action by private actors is a matter of criminal justice. In recent times, however, this approach has given way to more realist thinking which holds that States are expected to exercise due diligence in preventing, prosecuting and punishing those who perpetrate violence against women, "whether those acts are perpetrated by the State or by private actors". As the Special Rapporteur stated in her first report, "this emergence of State responsibility for

violence in society plays an absolutely crucial role in efforts to eradicate gender-based violence and is perhaps one of the most important contributions of the women's movement to the issue of human rights" (E/CN.4/1995/42, para. 107).

15. Although not legally binding, the Declaration on the Elimination of Violence against Women sets out a comprehensive framework with regard to the elimination of violence. With regard to violence against women in the community, the State is called upon to condemn violence against women and not to invoke custom, tradition or religion to avoid its obligations. The Declaration recommends, therefore, that the State take an active role in eliminating and preventing violence against women by or within the community. Article 4 of the Declaration requests that States "adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women". The State is vested with a positive obligation to bring about redress, not only through legislation, but also by fundamentally changing the patterns of socialization which tend to disempower women and create an atmosphere in which violence against them appears more legitimate.

16. The Declaration and the Convention on the Elimination of All Forms of Discrimination against Women highlight the importance of legislation and legal institutions in providing redress for women victims of violence but also emphasize the necessity of a multi-pronged strategy, including non-legal mechanisms, to eliminate such violence. To this effect, the Declaration calls for police training, sensitization of the judiciary, reform of educational curricula, data collection and specialized assistance to women victims. The Special Rapporteur would like to reiterate the importance of these measures in supplementing legislation and the criminal justice system if long-term policies to combat violence against women are to succeed.

III. RAPE AND SEXUAL VIOLENCE AGAINST WOMEN, INCLUDING SEXUAL HARASSMENT

17. In July 1991, 71 teenaged schoolgirls at a Kenyan boarding school were raped by their male classmates. Nineteen of the girls died as a result of the attacks and the chaos that ensued. The devastation of the event was compounded by the response of the Deputy Principal, Ms. Joyce Kithira, according to whom "[the] boys never meant any harm against the girls. They just wanted to rape". 2/

18. As a manifestation of violence against women, rape and sexual violence, including sexual harassment, are universal, cutting across State borders and cultures, used in all countries and in all cultures as weapons of degradation and terror against women. All forms of sexual violence against women serve as methods of subjugating women by controlling their sexuality through violence, fear and intimidation.

19. "Rape is an intrusion into the most private and intimate parts of a woman's body, as well as an assault on the core of her self." 3/ It is the destructive combination of power, anger and sex which fuels sexual violence

against women. Many victim-survivors of rape report experiencing feelings of annihilation as a consequence of being raped, arising from the very nature of rape - a direct attack on the self. One study of convicted, incarcerated rapists found that rape was used most often as a mechanism of revenge or punishment and the perpetrators expressed satisfaction and heightened levels of self-esteem directly resulting from the rape.

20. Like survivors of traumatic events such as war and torture, rape victims often suffer a form of post-traumatic stress disorder termed Rape Trauma Syndrome, which is generally induced in individuals who are subjected to extreme threats, terror and helplessness. The sufferer of Rape Trauma Syndrome continuously relives her rape through a series of flashbacks, dreams and body memories. 4/

21. Rape and sexual violence, including sexual harassment, occur at different levels of society and in distinct settings. Although all forms are connected as manifestations of sexual violence against women, they are distinct in that particularized strategies are necessary in order to provide appropriate remedies. The Indian Forum against the Oppression of Women has enumerated nine distinct forms of rape: (1) communal rape; (2) gang rape; (3) political rape; (4) rape of minors; (5) marital rape; (6) army rape and/or police rape (in situations of war or "peace-keeping"); (7) institutional rape (in hospitals, remand homes and prisons); (8) rape in economically dependent circumstances; and (9) rape within political organizations.

22. The Attorney General of Kenya recently recognized that "the most noticeable and notorious gender crime of our time is rape". 5/ Despite such anecdotal evidence, however, reliable statistics are difficult to obtain regarding the incidence of rape worldwide. Official governmental statistics derived from victim reporting seldom reflect reality. Underreporting of the crime might arise from the fear of being re-victimized in the criminal justice system, of not being believed, from self-blame and from failure by rape victims to equate their experience with the legal definition of rape.

23. As is the case with other forms of violence against women, the lack of statistical data on rape arises by traditionally categorizing such violence as "private" and as a result of a general lack of institutional will to effectively address women's complaints when victims seek redress from State agencies. Recognizing that such statistics are also underrepresentative, indications of the scope of sexual violence can none the less be gathered from existing statistics:

(a) A national probability sample of 1,835 women at 95 colleges and universities in Canada found that 23.3 per cent of the women had been victims of rape or attempted rape. 6/

(b) In Jakarta, city police recorded 2,300 cases of sexual violence against women in 1992, 3,200 cases in 1993 and 3,000 in only the first half of 1994; 7/

(c) A survey of 2,270 adult women in Seoul found that approximately 22 per cent of adult women had been the victim of either attempted rape or rape; 8/

(d) According to the Ministry for Social Protection of the Russian Federation, out of the 331,815 reported crimes against women in the Russian Federation in 1993, 14,000 of them were rapes. 9/ Russian non-governmental organizations working with women victims believe the number to be significantly higher;

(e) In the United Kingdom, a sample survey of 1,476 women at universities and polytechnics found that 19.4 per cent had been the victim of sexual violence. 10/

(f) Although adolescents account for less than 10 per cent of the population of the United States, they are estimated to make up 20 to 50 per cent of all reported rape victims; 11/

(g) According to one study of 6,000 university students in the United States, one out of six female students reported that they had been a victim of rape or attempted rape during the previous year. In the same sampling, reportedly 1 out of 15 male students stated that they had committed rape or attempted to commit rape in that year. 12/

A. The criminal justice system

24. The police station is the most common point of entry into formal State legal structures for most victim-survivors of rape. The police culture in many countries, however, is characterized by discriminatory attitudes towards women in general, and towards women victims of violence in particular. A non-governmental organization in India has documented the ways in which discriminatory perspectives are manifested throughout the police reporting process: 13/ one victim-survivor filing a complaint was asked by a police officer if she even knew "the meaning of the word 'rape'"; in another instance, a police officer was reported to have said, "a woman like you will never get raped; don't try to tell us that you did not enjoy it".

25. Such discriminatory behaviour naturally affects the way in which women perceive the police. Women's general distrust of the police, provoked by widespread reports of police misconduct and ill-treatment of women victims of violence, further discourages women's access to formal State structures. The atmosphere which prevails at a police station at the time of reporting a crime will greatly influence whether the woman victim will pursue her complaint. Rape victims must be assured a measure of privacy for recounting the incident without inhibition and police officers should be trained to deal with women victims in a sympathetic and confidence-building manner and provide relevant information for referrals, if necessary. Only relatively few countries, however, have developed specialized law enforcement training on violence against women. The need to transform attitudes within law enforcement hierarchies so as to make the police responsive to suggestions for change is an extremely important element of State responsibility for the prevention and prosecution of rape and other forms of violence against women.

26. Strategies which aim at setting up "one-stop centres" for women victims, either at hospitals or police stations, are perhaps the most effective in combating the problem and in avoiding re-victimization at the hospital. In some countries, such as in Brazil, special women's police stations or women's

desks at police stations have been established in order to deal with issues related primarily to domestic violence and rape (see E/CN.4/1997/47/Add.2). Close and effective cooperation between the police and medical professionals is essential in this regard.

27. If rape victims are required to undergo a medical examination at a medical forensic clinic or at a hospital, it is important to realize that the behaviour of medical professionals is also decisive in determining whether the victim will continue to press charges. The need to sensitize health personnel is, therefore, underscored. In some countries, such as Australia, Brazil and Canada, special forensic examination kits are provided in order to accelerate and standardize the procedure. However, in other countries, such as India, the doctor may undertake a test to determine the victim-survivor's virginity based on the number of fingers that can be inserted into the woman's vagina. The Special Rapporteur considers that immediate medical attention is essential for victim-survivors of rape, not only for evidence collection but also because of the risk of contracting a sexually transmitted disease or becoming pregnant.

28. A reason for disproportionately low rates of reporting of rape could be that even though cases are brought to the courts, systemic obstacles and discrimination in the form of unreasonable evidentiary requirements, the rejection of the victim's uncorroborated testimony, the evocation of a victim's past history, the focus on the victim's resistance, the emphasis on the overt use of force and requirement to prove chastity. Indeed, in rape cases, it is the victim who is most often placed on trial rather than the perpetrator, accused of having ulterior motives and subjected to degrading questions with often pornographic overtones. Prosecutors might fail to adequately address the victims' needs and all too often, information is, either intentionally or unintentionally, withheld from victims.

29. When a conviction is achieved in connection with a rape case, sentencing practice often leaves much to be desired. For example, although Polish national legislation prescribes a penalty of 1 to 10 years' imprisonment for rape, in practice over 50 per cent of those convicted of rape are sentenced to 1 to 2 years' imprisonment, 30 per cent are sentenced to 2 to 5 years and a mere 21 per cent are sentenced to a prison term of over 5 years; 30 per cent of all sentences are suspended. Additionally, even though Polish law treats rape as a crime against personal freedom, both the police and the judiciary generally minimize the significance of the crime by blaming the victim. Such discriminatory attitudes of the judiciary compelled the Supreme Court of Poland, in 1979, to issue a directive calling on the lower courts to apply the letter of the law. In many other countries, lenient sentences continue to obstruct effective implementation of the law with regard to rape.

30. In other countries, legislation prescribes minimum sentences for different categories of rape. According to the November 1995 amendments to the Penal Code in Sri Lanka, the minimum sentence for a rape conviction is 7 years but for certain aggravated cases such as custodial rape, gang rape or rape of a pregnant women, the minimum sentence is 10 years.

31. The trauma of a rape trial for the victim may not end with successful prosecution, as appeal processes may last for years, prolonging and impeding

the healing process. As has been rightly pointed out, each appeal to a higher court is a gamble: "The pendulum can swing from one extreme to the other. On scrutinizing the same facts, the trial court may acquit the accused, the High Court may convict him and the Supreme Court can acquit again". 14/

32. Criminal prosecution is not the only legal mechanism for redress for rape victims since civil suits provide potential remedies as well. The general tort law of most countries provides private causes of action for intentional torts such as assault, battery and the intentional infliction of emotional distress. The benefit of civil claims is the lower standard of proof, since the plaintiff must only prove guilt based on a balance of probabilities and not beyond reasonable doubt, so that issues of consent, force and resistance are less likely to be obstacles. Additionally, the victim has sole power, within the statute of limitations, to determine when and if to bring a civil suit, thereby empowering for the victim.

33. Issues of race, ethnicity, class and disability often exacerbate the institutional failures with regard to the State response to rape and sexual violence. In the United States of America, "rape was a common method of torture slavers used to subdue recalcitrant black women" and it is held that the impunity with which white men raped black women in the slave era has contributed to the "systematic devaluation of black womanhood". 15/ This devaluation and discrimination manifests itself in the criminal justice system through the lack of proportional prosecution and sentencing of sexual violence committed against black women. Such disparities exist as a result of institutional racism that gives rise to and feeds off stereotypical images of black women as sexually available and undeserving of protection by the law. Similar experiences are reported by minority women, women living in poverty and women of low social class throughout the world who have been labelled "unworthy" of State or community protection.

B. Legal framework

34. Traditionally, rape has been legally defined as a crime against morality. Although at present rape laws in many countries are changing to defining rape as a crime against the person or physical integrity, often the legal link between rape and morality remains, for example in countries of the Latin American region. Conversely, in Nicaragua, which has the most progressive rape law under traditional Latin American criminal codes, rape is classified within crimes against persons. In addition to moving away from the link with morality, legal focus has shifted from the traditional man-against-woman approach towards a gender-neutral definition of the crime.

35. The legal definition of rape in most countries is limited to non-consensual or forced vaginal penetration, so that the focus is on a male perspective of acceptable boundaries of heterosexual sex rather than on the victims experience of sexualized violence. "[M]ale standards are used not only to judge men, but also to judge the conduct of women victims." 16/ Some Commonwealth jurisdictions, however, have revised their definitions of rape to focus more broadly on acts other than penile penetration, such as the insertion of objects into the vagina and anus.

36. Consent has been defined as the legal dividing line between rape and sexual intercourse. In court, the argumentation over consent, however, often degenerates into a contest of wills and credibility. Many courts are reluctant to find the defendant guilty of rape in the absence of physical injuries. If consent forms an integral part of the definition of rape as a crime, as in most legislations, prosecution must assume the burden of proving the lack of consent beyond a reasonable doubt. If, however, consent is provided as an affirmative defence outside the definition of rape, the burden of proof of consent shifts to the accused. In 1983, amendments to the Indian Penal Code shifted the burden of proving the lack of consent to the accused in cases of custodial rape. The latter still does not constitute mainstream legal thinking on the subject, however.

37. Statutory rape laws, constructed around the age of consent, provide a mechanism through which the State attempts to define those who are legally incapable of consent. In many countries where early marriage is permitted, the age of consent is abominably low and in violation of international human rights instruments protecting the rights of the child. The need to ensure that laws protect children from abuse requires that the age for statutory rape be put at below the age of 18. However, given the increase of sexual activity among teenagers in some societies, this may cause difficulties. It seems that what is lacking in statutory rape legislation, therefore, is a conceptualization in terms of power relationships. It is sometimes argued that "the Law takes the most aggravated case for female powerlessness based on gender and age combined and, by formally prohibiting all sex as rape, makes consent irrelevant on the basis of an assumption of powerlessness". 17/ In statutory rape cases, the need to determine whether the perpetrator was also a minor or an adult may be one way of moving forward with regard to this issue.

38. In some countries, attempts at law reform have adopted a system of gradation with regard to sexual violence, sex crimes or criminal sexual misconduct, ranging from harassment to gang rape. All acts of sexual violence are covered under one legal umbrella. The term rape is often not used, in preference to a less emotive term such as sexual violence. However, this also means that the use of force effectively determines the seriousness of the crime. Gradation schemes, however, may undermine the seriousness of sexual violence that fails to be manifested by physical violence, so that "... victims who had been beaten felt that the act of sexual intercourse rather than the assault was the primary injury. Some felt that the beating and bruising they received assisted them in the criminal justice process, while the rape itself was not accorded the centrality it deserved. Any legislation highlighting the violent component of the offence at the expense of the sexual violation involved, would therefore seem to be at odds with the perception of many victims." 18/

39. In many countries, there exists a legal requirement that the testimony of the victim be corroborated. This has, however, been effectively challenged in many jurisdictions since the 1980s, especially within the Commonwealth. Although the judiciary in India has recognized that the special circumstances of rape generally do not lend themselves to the presence of eyewitnesses, judges, especially in cases where the victim is not a virgin or is unmarried, continue to require circumstantial evidence, such as physical injuries, torn

clothing or the presence of semen, to corroborate the victim's story. The increasing presence of women advocates is resulting in a deviation from this practice.

40. Some laws and evidentiary rules allow evidence concerning the victim's sexual history, making the issue of virginity legally relevant and possibly rendering a cross-examination on the victim's sexual history humiliating, whilst providing for restrictions on the admissibility of the history of sexual violence of the accused. In many societies, there is an important link between virginity and the prosecution for rape. Medical examinations to determine rape often require that a victim is examined to ascertain whether she is a virgin or has had some past sexual experiences. This link between virginity and prosecution for rape ensures that certain categories of women, such as prostitutes, are seen as being outside the boundaries of what could constitute rape; as "unrapable". In many jurisdictions, however, these provisions have been changed due to lobbying by women's groups.

41. The issue of pregnancy as a consequence of rape also raises particular problems in countries in which abortion is prohibited. Laws prescribing abortion or extending restrictions on abortion to cases of rape discriminate against women in general and victims of rape in particular and the State compounds the injury to the rape victim through forced pregnancy. States bear the burden of safeguarding women's reproductive health and protecting their reproductive rights, and the manipulation of women's control over their own bodies and reproduction through laws criminalizing abortion run counter to this obligation.

42. To illustrate the differences in national laws governing rape and sexual violence, the Special Rapporteur lists below some national examples submitted to her:

(a) Ghana considers rape as a first degree felony punishable by a sentence of not less than three years' imprisonment and in addition to a fine not exceeding 500,000 cedis (less than US$ 500) and in default of the payment of the fine to a further term of imprisonment;

(b) According to the Indian Penal Code, rape is a gender-specific crime committed by a man against a woman and is a cognizable, non-bailable offence with a minimum sentence of seven years. Police have the power to investigate and arrest the suspect without a warrant but they do not have the authority to grant bail. The Penal Code has a separate provision for sexual violence; prohibits "unnatural sex where a man inserts the penis into the mouth or anus of the victim (male or female)" (sect. 377) and forbids "uttering a word or making a gesture intended to insult the modesty of a woman". In addition to the prison sentence, a fine may be imposed on the convicted rapists at the judges' discretion. In recent cases, money recovered as the fine has been given to the victim rather than to the State;

(c) In Japan, despite seemingly adequate laws on sexual assault and rape, judicial interpretation has greatly weakened the force of the law. Articles 176 and 177 of the Penal Code define sexual assault and rape in terms of "using violence, making threats or both". In order to determine the level of violence and/or threats, courts have focused on the victims' level of

resistance rather than on the level of fear. Additionally, a 1959 precedent from the Yamaguchi district court holds that ordinary sexual intercourse is performed under a certain degree of force, thus making rape more difficult to prove. Building on the 1959 precedent, a 1978 case of the Hiroshima High Court dismissed the charge of rape because it found no evidence of tangible force beyond "ordinary sexual intercourse". Furthermore, civil law has been interpreted to provide a husband whose wife has been raped with a right to seek compensation from the rapist, thereby codifying the traditional perception that women's bodies are their husbands' property;

(d) According to Nepalese legislation, the crime of rape can only be committed against "maids, widows or married women above 16 years";

(e) According to article 117 of the Russian Criminal Code, "ordinary rape" is defined as "sexual intercourse by use of force or threats or by taking advantage of the helpless state of the victim". "Aggravated rape" is "rape accompanied by threat of murder or by serious injury or committed by a person with a record of previous rape conviction" and "especially aggravated rape" is "rape accomplished by a group of persons or by an especially dangerous recidivist or entailing especially grave consequences and also rape of a minor";

(f) In the Ugandan Penal Code, "rape, defilement of girls under the age of 18 and unlawful sexual intercourse with a prisoner" are punishable by the death penalty.

43. In her forthcoming report, the Special Rapporteur will discuss the need for a separate legal definition and treatment of the crime of custodial violence, which must also be reflected in the sentencing structure so as to effectively deter criminal acts by State officials which result in violence against women.

C. Sexual harassment

44. Catherine Claxton joined the United Nations on 4 February 1974 and became a permanent staff member on 1 October 1977. Ms. Claxton and Mr. Gomez, a senior United Nations official, were colleagues on a first-name basis. On 2 March 1988, Ms. Claxton entered Mr. Gomez's office to discuss an official matter. After some suggestive remarks by Mr. Gomez, however, Ms. Claxton moved to leave the room. At this point, according to a report dated 21 January 1994 by Justice Mella Carroll to the Secretary-General of the United Nations "(Mr. Gomez) grabbed her by the shoulder/upper arms and forced his tongue into her mouth. He moved his right hand to her buttocks and pulled her against him and then moved that hand to her breast. At this stage she was able to pull free". The judge stated in his opinion, "All in all, I am satisfied that there is clear and convincing evidence that Mr. Gomez assaulted Ms. Claxton on 2 March 1988 as alleged". He added "this was sexual harassment". There were also dicta in the judgement that Mr. Gomez may have attempted to affect Ms. Claxton's career by refusing to change the classification level of her job. Mr. Gomez officially retired on 15 February 1994.

45. Within weeks, it was discovered that Mr. Gomez had been rehired by the United Nations Development Programme at a level that allowed him to retain his diplomatic immunity and thus remain outside United States legal jurisdiction (Ms. Claxton's lawyers had filed a suit at the New York Supreme Court). Despite the report of the judge, the United Nations insisted that no damages were payable by the Organization. 19/

46. The United Nations has, in some cases reported to the Special Rapporteur, shown a certain insensitivity to the problem of sexual harassment. The need to establish mechanisms to ensure redress to women victims of violence is an absolute necessity in any workplace or educational institution. The "Claxton case" proves the point that sexual harassment can take place in any working environment and that all organizations should have rules and regulations to meet this eventuality. The United Nations is no exception.

47. Sexual harassment must be understood to exist on the continuum of sexual violence against women. It is a personal attack on women's minds and bodies, instilling fear and violating a woman's right to bodily integrity, education and freedom of movement. It is utilized as a powerful mechanism of control and intimidation, through which women's subordinate social status is maintained. Sexual harassment frequently occurs on the street, in the workplace, in educational institutions and on public transportation. The more pernicious form, however, is sexual harassment in the workplace or in educational institutions. Sexual harassment strikes at the heart of women's economic self-sufficiency, disrupting women's earning capacity by forcing them out of the workplace or school. Women are nine times more likely than are men to leave their job as a result of sexual harassment.

48. In many countries, sexual harassment is not codified as a criminal offence, although recent trends indicate a greater willingness on the part of Governments to promulgate legislation to curtail sexual harassment. This could be done by defining sexual harassment as a crime under the penal code or, especially with regard to educational institutions and the workplace, by recognizing sexual harassment as a violation of women's equality in violation of the constitutional and legislative provisions governing gender equality.

49. Earlier laws on sexual harassment as a criminal offence revolved around the concept of "outraging the modesty" of women, linking sexual violence with arcane notions of female sexual morality. Newer legislation, however, usually provides that a person who, by assault, use of criminal force, words or actions, causes sexual annoyance or harassment is guilty of the offence of sexual harassment. In some contexts, the words "unwelcome sexual advances" are also used. The penalty for such a crime varies, from no minimum sentence up to approximately five years' imprisonment. Compensation to the victim is mostly left to the judge's discretion.

50. As already mentioned, in addition to criminal prosecution, constitutional and legislative guarantees of equality could also be used to fight sexual harassment. In the United States of America, for example, sexual harassment has been legally conceptualized in terms of workplace harassment. According to the Equal Employment Opportunity Commission, sexual harassment is characterized by "repeated demands or continuing behaviour of supervisors or coworkers that add a discrimination condition to the terms of employment or

create a harmful work environment for men or women". 20/ Sexual harassment is defined in Title VII of the American Civil Rights Act as "unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature ... when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment". 21/

51. The above definition identifies two types of sexual harassment. The first is quid pro quo harassment in which decisions on hiring, termination, promotion or pay are made based on the employee's response to sexual advances. This type of harassment is defined in terms of power dynamics when the harasser has a certain leverage over the victim's employment status. The second type of sexual harassment is perpetrated by the creation of a "hostile work environment, including: (1) discussing sexual activities; (2) touching someone unnecessarily; (3) using demeaning or inappropriate terms (such as 'babe'); (4) using unseemly gestures; (4) granting job favours to those who participate in consensual sexual activity; and (5) using crude or offensive language". 22/ In some States, including Australia, the display of pornographic material in the workplace is seen as contributing to such a hostile work environment.

52. The European Union has recently introduced a code of practice on sexual harassment in the workplace, which defines sexual harassment as "unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work". 23/ The code, however, is neither binding nor enforceable. Additionally, the code identifies the scope of sexual harassment to include pornography.

53. Whereas in the Russian Federation the Criminal Code proscribes sexual harassment, job advertisements continue to request that women employees be "without inhibitions". Despite this, a mere 20 cases of sexual harassment per year are reported to be filed under the Russian statute. 24/ In Australia, the Federal Sex Discrimination Act of 1984 makes sexual harassment unlawful in situations of: (a) employment; (b) education; (c) the provision of goods and services; (d) the provision of accommodation, land transactions, admission to clubs; and (e) the administration of the Commonwealth. In the Philippines, legislation has been enacted which criminalizes sexual harassment in the workplace, schools and training centres. Reportedly, however, the Department of Labour and Employment fails to enforce the labour code standards, even in cases of blatant discrimination in job advertisements, hiring practices and unequal pay. In the United Kingdom, the Sex Discrimination Act of 1975 has compelled courts to conclude that sexual harassment is discrimination.

54. Even in the absence of specific legislation relating to sexual harassment, general tort laws may be utilized. In 1993, a woman in Tasmania successfully utilized tort laws on assault and battery to sue her employer for sexual harassment, since Tasmania had no specific laws governing sexual harassment.

55. Many governmental and intergovernmental agencies and trade unions have issued guidelines and manuals concerning sexual harassment at the workplace or educational institutions. One of the most successful campaigns was waged by the Australian Human Rights and Equal Opportunities Commission in 1991, entitled "SHOUT", involving poster and media campaigns to advertise a toll-free telephone number to assist women victims of sexual harassment.

56. The mere prohibition of sexual harassment is not adequate to assist victims of violence. It is imperative that institutions, whether public or private, educational or industrial, have internal procedures that ensure redress in cases of sexual harassment. The Canadian Federal Labour Code serves as a model in this regard. It requires employers to issue a sexual harassment policy that condemns sexual harassment, indicates that disciplinary measures will be taken against transgressors, provides for procedures to deal with instances of harassment and informs employees of their rights.

57. Most private companies have been slow to respond to victims' needs since the company's first priority generally is seeking to avoid negative publicity. In some companies, informal mechanisms to address employee's complaints have been institutionalized. Internal mechanisms, if not implemented or enforced vigorously, may, however, serve to privatize the violation and impede the victim's recourse. Often such mechanisms are designed to resolve conflicts through mediation rather than to address the victim's needs and hold the perpetrator accountable. Such practices add pressure to the victim in deciding whether or not to pursue a claim against the harasser. With little or no institutional support for reporting, the victim's concerns about her own job status may encourage silence. In this connection, some jurisdictions render the employer vicariously liable for sex discrimination if he or she does not take adequate preventive measures.

58. Incidents of sexual harassment are often concealed within the private sphere. Many victims who have come forward have suffered grave consequences, including increased harassment, public ridicule, job loss or expulsion from school. A Russian women's rights lawyer claimed that sexual harassment in the workplace is not an issue because women "like compliments". 25/ According to surveys undertaken in the United States and Hong Kong, men are much less inclined to view sexual harassment as a valid complaint than are women.

59. High profile cases in recent times have motivated the media to focus on issues of sexual harassment, stimulating increased reporting by breaking the victim's sense of isolation. For example, as a consequence of Anita Hill's allegations of sexual harassment against Clarence Thomas, a United States Supreme Court nominee, and the widespread media coverage of the case, complaints to the Equal Employment Opportunity Commission in the United States have more than doubled. A celebrated case with regard to the criminalization of sexual harassment took place in India when old laws on "outraging modesty" were used to convict the former Director-General of Police, Mr. K.P.S. Gill, of sexual harassment. Mr. Gill, one of the most respected members of the Indian police force, was sentenced to serve time in prison for what may be termed a modern case of sexual harassment.

60. The link between sexual harassment and severe physical, psychological and health-related problems has been established. Eating disorders,

depression, anxiety, nausea, headaches, insomnia, increased use of alcohol, nicotine or drugs, stomach problems and weight loss are among the physical and psychological problems that arise for many victims. The United States Merit Systems Protection Board estimates that sexual harassment cost the Federal Government US$ 267 million over a two-year period. This figure represents costs associated with reduction in productivity, sick leave and the replacement of employees.

61. Statistics on sexual harassment, despite failing to represent the true extent of the violence, are quite revealing. A 1991 survey of sexual harassment in Japan found that 70 per cent of the 4,022 respondents had been harassed and, according to the Tokyo Metropolitan Government's Bureau of Labour and Economics, approximately 400 women made formal complaints of sexual harassment at work in 1992. An officer of the Bureau noted, however, that this number was unrepresentative, maintaining that as many as 10 times as many women are experiencing sexual harassment but not reporting it. 26/ A government survey undertaken in Japan found that 1 in 7 Japanese women in their 20s had been sexually harassed at some time. 27/

D. State strategies to combat rape and sexual violence, including sexual harassment

62. Many Governments have started to recognize and take steps to remedy the gender bias that has pervaded their interactions with victims of rape and sexual violence, including sexual harassment. Reportedly, however, mechanisms and bodies created to this effect, such as specialized women's police desks or stations, are often marginalized within State structures, underfunded, understaffed and suffer from low status within the criminal justice establishment. Nevertheless, they play an important role in the campaign to raise awareness and establish procedures with regard to providing redress for women victims of violence.

63. In other countries, such as India and the United States, training seminars have been carried out in an effort to sensitize police to the realities of violence against women and to educate them about victims' needs. Manuals developed by international organizations, such as the Commonwealth Secretariat, for police training should be disseminated widely. In Costa Rica, seminars and dialogues with judges have also proven very fruitful.

64. In some countries, such as the United Kingdom and South Africa, police stations have been made more friendly and confidence-inspiring to better meet the needs of rape victims. With the aim of collecting and preserving evidence in a sensitive manner, Canada has developed a sexual assault examination kit, containing information about the legal procedures, the medical examination, victim services and trial. The kit also contains instructions for the police and the examining physician, as well as receptacles for the collection of physical evidence. All the information materials in the kit are provided in the two official languages of the country, English and French.

65. In the United States, the Rape Treatment Center (RTC), a State-supported non-profit organization, at the Santa Monica (California) Hospital Medical Center, provides an example of a comprehensive rape crisis unit. Among the

many services it provides to victim-survivors are: (a) 24-hour emergency medical care; (b) evidence collection; (c) crisis intervention; (d) advocacy; (e) court accompaniment; (f) legal assistance; and (g) psychotherapy services. The RTC utilizes individual, family and group treatment modalities in their work with victim-survivors. Additionally, RTC conducts extensive outreach programmes including school-based prevention programmes; public education and victim-assistance programmes for businesses and community organizations; training for police, prosecutors, medical and mental health personnel; and consultations with the media and governmental agencies.

66. In Malaysia, "one-stop" rape crisis centres have been set up in some hospitals, complete with special examination suites. Doctors serving these suites are well trained in dealing with evidence collection relating to rape. The police are thereafter called upon to record the incident and a volunteer from a woman's organization is asked to be present to assist the woman victim. This notion of a "one-stop" centre at the hospital has been useful in streamlining the procedure and investigation in preparation for a rape trial.

67. In order to increase public confidence in the criminal justice system, some States have attempted to legislate good behaviour. The Victims of Offences Act of 1987, in New Zealand, instructs prosecutors, judicial officers, counsel and other persons working with victims to treat them with courtesy, compassion and respect for their personal dignity and privacy. Additionally, victims are to be fully informed of the services and remedies available as well as the nature of the proceedings. Any concerns they have about the accused and about bail should be transmitted to the appropriate body. Other States have implemented laws that limit the number of people present during rape trials or during the testimony of the victim. Laws restricting the public release of the victim's identity provide a further mechanism for protecting the victim.

68. Furthermore, rape shield laws have been designed as a mechanism of protection for victims of rape from traditionally discriminatory and abusive cross-examination. Such laws, which have been widely enacted in the United States, limit the admissibility of evidence relating to the victim's past sexual conduct with anyone but the defendant. The scope of protection actually provided by rape shield statutes to the woman victim varies, however.

69. In response to the frequent lack of access to legal representation by the victim, some Governments and non-governmental organizations have developed legal advocacy programmes to assist victims throughout the legal proceedings. Rape crisis centres, either independently or in conjunction with Government, often provide free legal advocacy services whereby advocates also accompany victims to the police and to court. Additionally, some Governments have established specialized sex crimes units within the offices of the State attorney to work with victim-survivors. All these legal advocacy services sometimes form part of a multi-disciplinary attempt to support victim-survivors.

70. In addition to reforming the criminal justice system, legislative changes and programmes for the support of women victims, both Governments and non-governmental organizations have developed sustained campaigns to raise awareness of the crime of violence against women and to provide information to potential victims.

IV. TRAFFICKING IN WOMEN AND FORCED PROSTITUTION

71. Each year, thousands of women throughout the world are trafficked; they are tricked, coerced, abducted, sold and, in many cases, forced to live and work under slavery-like conditions as prostitutes, domestic workers, sweatshop labourers or wives. The exploitation of female labour and of the female body has led to an international industry of trafficking in women. Such trafficking occurs for diverse purposes but the movement of women within countries and across frontiers is usually a result of their unequal bargaining power and vulnerability to exploitation.

72. Today, women are primarily trafficked from the South to the North and increasingly from South to South: from countries in which structural adjustment has bankrupted the State economy, deforestation has destroyed villages and forced families into urban areas and the feminization of poverty is most apparent, to countries where the gross national product and the standard of living for the average citizen are higher. Consequently, trafficking in women is fuelled by poverty, racism and sexism.

73. Although trafficking has been of international concern since the beginning of this century, little has been accomplished to effectively combat the flourishing trade in women. Admittedly, trafficking in women presents complex enforcement issues due to its international character and the numerous actors involved. With few exceptions, countries of origin, transit countries and countries of destination refuse to accept responsibility for protecting trafficked women. The primary concern of most States is the "illegal" status of the victim who, if discovered, is quickly targeted for deportation.

74. Currently, there exists no consensus within the international community regarding the definition of trafficking in women. In fact, trafficking, due to its traditional conceptualization in terms of prostitution, is an extremely divisive issue within the international women's movement and among States. Historically, trafficking has been defined as the "trade of women for the purpose of prostitution" generally involving the crossing of international borders, so that newer forms of trafficking for domestic service, marriage and sweatshop labour were not included. In 1994, the General Assembly defined trafficking as the "illicit and clandestine movement of persons across national and international borders, largely from developing countries and some countries with economies in transition, with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations for the profit of recruiters, traffickers and crime syndicates, as well as other illegal activities related to trafficking, such as forced domestic labour, false marriages, clandestine employment and false adoption". 28/

75. The United Nations addresses trafficking in women through the 1949 Convention on the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1949 Convention). Due to its ill-defined and broad terminology, a weak enforcement mechanism and its uniquely abolitionist perspective, the 1949 Convention has failed to attract widespread support and only 70 States are parties. Most Gov ments and non-governmental organizations agree that there is an urgent ed to reformulate international standards so as to meet the exigencies of modern

reality. Such a reformulation requires a definition of trafficking and would have to set out principles to guide national and international action with regard to trafficking in women. Unfortunately, the women's movement is deeply divided over this debate, preventing a concerted international effort to bring about necessary and important changes with regard to international standards.

76. Given the fact that much trafficking crosses frontiers, international standards and guidelines are the only meaningful mechanisms with which to confront the phenomenon. It is imperative that the different camps of activists and Governments which have fought so valiantly for the human rights of trafficked women over the years engage in a constructive dialogue with a view to collectively evolving international standards and mechanisms to provide redress for women victims.

77. Patterns of trafficking in women vary according to changing regional conditions and potential opening of markets, similar to a supply-demand curve. An increase in trafficking, for example, occurred during the first wave of industrialization in the nineteenth century. Additionally, technological advances have consistently been employed by traffickers to develop new routes and facilitate international transactions, so that the railroad, ocean steamer, telegraph, telephone and now Internet all increase the scope of their networks. In some countries, such as the United States, the Internet has become an integral component of trafficking in women for the marriage market, used not only to advertise marriage brokers but also to display women and girls for sale as brides.

78. Trafficking routes replicate migration routes and, according to the International Organization for Migration, arise out of situations of poverty, lack of viable economic opportunities, disparity in wealth between countries and the marginalization of women in countries of origin. The promotion of tourism as a development strategy has also contributed to the prevalence of trafficking in women for prostitution. Kenya provides a contemporary example of a country in which the flourishing tourism industry has led to an increase in trafficking in the region. Women from Uganda are lured to Kenya for the purpose of providing prostitutes for the growing tourist population. There are reports that women from India are likewise lured to Kenya to work as performers but end up as prostitutes.

79. Trafficking in women does not only occur from South to North, but also occurs within regions and States. In Colombia, there are trafficking networks for prostitution that solely traffic women within the country or regionally, sending women to Venezuela, Ecuador and Panama. In Colombia, there also exist traffickers dealing exclusively on a global scale, providing Colombian women for markets in Spain, Greece, the Netherlands, Germany, Belgium and the United States of America. Brazil has a flourishing network that systematically traffics women and girl children for prostitution to mining camps and large civil construction projects within the country.

80. Two main patterns of trafficking for prostitution have been documented. The traditional "two-step" pattern targets women already working in prostitution to be trafficked abroad, whereas the more aggressive "one-step" pattern targets women and young girls directly in their villages to be trafficked for prostitution abroad. With the increased demand for younger

women arising from the fear of HIV infection, the "one-step" pattern is beginning to dominate. This usually involves a neighbour or relative who approaches the victim or her parents, deceiving them in order to gain "compliance".

81. One report has identified the following reasons for the steady rise in trafficking for prostitution: 29/

(a) A market, driven by customer demand based on racist, sexist and ethno-centric stereotypes, for foreign and "different" women;

(b) The enormous profitability of exploiting women as prostitutes motivating individuals and organized crime networks to engage in the trade in women;

(c) The feminization of poverty in the victims' home countries, providing a continuous pool of potential "recruits";

(d) Official policies of international development banks and lending organizations encouraging the development of tourist sector services, resulting in severe socio-economic consequences for women;

(e) Lack of an effective international regime for collecting data, providing information and penalizing organized international traffic networks, ensuring that the problem remains hidden;

(f) Demand for undocumented migrant male workers creating a demand for women prostitutes.

82. In some countries, certain traditional practices give rise to trafficking and slavery-like practices. For example, the Devadasi system in India, once widespread in the country, entails ritualistic marriages of young girls to gods. Often the Devadasi women are later forced into prostitution either out of economic necessity or after being sold by priests to brothels. A similar practice, the Deukis system, is found in Nepal where rich families without daughters are increasingly buying young daughters from impoverished rural families and offering them to the temple as their own. These girls are prohibited from marrying and often become either "kept wives" or prostitutes. Reportedly, 17,000 girls were endowed as Deukis in 1992. 30/

83. The recruitment of women for prostitution in many societies is often achieved with the complicity of the family. Some impoverished households in Nepal, Bangladesh and Myanmar, for example, sell their daughters, often unknowingly, for money which is used to force the girl to work in debt bondage. This subversion of the family is increasing at an alarming rate as poor families often have very few options for survival. The recruitment of women to be trafficked for prostitution also occurs through deception. Women are misinformed about the type and conditions of the work they will be forced to undertake. Even with (sham) contracts for waitressing, child care or domestic labour, many women from Central and Eastern European countries find themselves forced into prostitution abroad. Those aware of their future employment as prostitutes are frequently deceived about their wages and conditions of work.

84. The case of Yai, 19 years old. 31/ Yai worked in a department store in the south of Thailand but was promised employment in a clothing factory in Taiwan where she could earn a much better salary than she ever would in her current job. Yai's recruiter was a high-ranking Malaysian police officer, who took Yai's passport to arrange her visa for Taiwan. As they landed in Taiwan, the recruiter gave Yai a fake Malaysian passport and she never saw her Thai passport again. In the arrivals hall, a man of Chinese origin met Yai and drove her to a hotel. That night she was raped by him. Yai was then forced into prostitution, serving 10 to 20 clients per day. She had no option to leave, was threatened with beating and never received any of the money that was paid for her services. Yai's customers included high-ranking Taiwanese policemen who received free sexual services in return for protection.

85. Marriage is also used as a method of recruitment for trafficking. In order to traffic women to Pakistan, Bengali traffickers or their networking partners are required to marry their victims so as to protect themselves from being prosecuted under Islamic Hudood laws. None the less, 2,500 Bangladeshi women and children are currently being detained in Pakistan under these laws, charged with illegal entry and for having "illegitimate sex". 32/ Of the 100,000 to 160,000 Nepalese women and girls reportedly working in India's brothels, at least 35 per cent have been brought into India under the pretext of marriage or good jobs. 33/ In Kenya, trafficking is mostly carried out under the guise of marriage, friendly invitations and job offers, with Nigerian women known as "madams" or "Mama-Loa" acting as middle-persons between the victims and their traffickers. Parents in eastern Uganda are deceived by traffickers into believing that their daughters will work on farms or as domestic workers in Kenya, whereas club owners in Suriname reportedly pay women US$ 500 for every Brazilian recruit.

86. Women from developing countries, such as the Philippines and Colombia, in South-East Asia and in Eastern Europe are also sold to thriving marriage markets in Western Europe, North America, Australia and Japan. Within Japan there are more than 700 marriage brokers operating, whereas in the United States, there exist hundreds of companies feeding the marriage market through which an estimated 2,000 to 5,000 American men have purchased wives. However, despite the growth and increased awareness about the marriage market, there are few laws prohibiting or regulating it.

87. In Taiwan, poor farmers and the elderly are among the men who pay intermediaries approximately US$ 3,000 for young Vietnamese wives. In Viet Nam, the traffic in brides is growing as ethnic Chinese women from poor northern Vietnamese villages are transported across the border into China to marry rural Chinese men from villages devoid of women. Refugee women from Mozambique are lured across the border into South Africa by promises of work only to be sold as concubines or wives to South African men. More than 5,000 Nigerian women prostitutes between the ages of 16 and 30 were reportedly sold as wives to farm workers in the south of Italy.

88. In China, the incidence of kidnapping and selling of women in rural areas has been increasing since the mid-1980s, so that, in some counties and villages, between 30 and 90 per cent of marriages result from trafficking. Also in China, public security officials in Shandong province, report that 13,958 women were bought and sold in the province in 1990; of those,

3,966 women were freed and 1,690 individuals were arrested on charges of slave-trading. In Jiangsu province, between 1986 and 1988, 48,100 women from all regions of China were sold. The shortage of women in rural areas, traditional views on maintaining the family line which require all sons to marry and the high expenses associated with weddings and betrothal gifts of non-forced marriages all contribute to the demand for women trafficked for forced marriages in China.

89. The case of Liu Xuelan, 16 years old. 34/ On 1 January 1989, in Linsu county in Shandong province, Liu Xuelan was forced into marriage with a man 26 years her senior. After the wedding, she tried to run away but was caught each time, tied up and beaten by her husband. He drove needles under her fingernails and Liu was bruised and bloodied from head to toe, with arms swollen to the size of her thighs. When people from the County Women's Federation tried to intervene, her husband yelled "What do you think you are doing? She is mine. I got her in exchange for my little sister".

90. Debt bondage is widely used by traffickers to control trafficked women, particularly women trafficked for prostitution. Often women are forcibly detained in apartments, factories, homes or brothels to foreclose escape prior to paying back their debts. Women and girls from Myanmar typically "serve" 6 to 8 men per day, 25 days a month, and earn from AUS$ 600 to 2,500 per month for the brothel owner, of which receives AUS$ 1/day or AUS$ 25/month. In the Dominican Republic, women often borrow against future earnings or mortgage their family home in order to obtain the advance fees demanded by recruiters. The debts, amounting to thousands of United States dollars, must be paid back before the women are allowed to leave. In Kenya, women who work in so-called massage parlours are forced to work 24-hour shifts and receive a mere 25 per cent of their earnings. Similar situations are reported by women from Uganda who are lured to Dubai and Western Europe and women from Latin America and Eastern Europe who are forced to work the streets of Italy to pay back the debt accrued from their migration. In some cases, traffickers withhold all money.

91. In Central and Eastern Europe, as well as other parts of the world, organized crime syndicates are involved in trafficking of women for forced prostitution. In such cases these international crime syndicates, with bases in many countries, are often beyond the reach of the legal system of any single country (see E/CN.4/1997/47/Add.1).

92. The Special Rapporteur is particularly concerned that trafficked women report high levels of State participation and complicity. According to a 30-year-old Bangladeshi woman who was trafficked to Pakistan at the age of 27, "... we were taken to a secluded place in the jungle before crossing the border to Pakistan under police custody. The border officials kept the girls who were pretty and sexually abused them until the other lots of girls came, then the previous ones were released". 35/

93. Reportedly, officials of both Myanmar and Thailand are involved in trafficking women from Myanmar to Thailand. "In many instances, the girls could document instances of being transported into Thailand with policemen in uniform, armed and often in police vehicles. Once in Thailand the brothels are under protection and had the patronage of the police. One of the girls

tells that she saw the police in all the brothels where she worked. They seemed to know the owner very well and were often around with their uniforms, guns and walkie-talkies. They also often took the girls to the rooms or out for the whole night. In Klong Yai the police had special arrangements with the owner and could take the girls for free". 36/

94. Additionally, bribes are often required to facilitate border crossing. Police officers are also notorious for corruption and for abuse of power over trafficked women. According to a Nepalese non-governmental organization, the only way to see a case of trafficking prosecuted is to bribe the local police. Local government officials in Nepal undermined a village awareness programme when they accused women who were teaching villagers about migration and trafficking of lying, arguing that trafficking did not exist. 37/

95. Migrant women prostitutes are particularly vulnerable to violence by State agents, such as the police and immigration officials, due to their often undocumented status, language deficiencies and lack of legal literacy. In Bangladesh, the "extraction of free sexual services" from prostitutes, in other words rape, has been widely reported. An investigation in Bogotá found that 50 per cent of girls aged between 11 and 14 and 25 per cent of women between 15 and 40 reported that abuse and extortion by the police was their main concern. 38/ Recently, the Mumbai police arrested 447 prostitutes in brothel raids and forcibly detained them although prostitution is not illegal in India. Additionally, the women were forced to undergo testing for HIV and other sexually transmitted diseases without their consent and without any subsequent medical treatment.

96. In view of the above, obstacles to reporting the violence and abuse which women trafficked for prostitution experience include: the lack of legal literacy and of confidence in the legal systems; fear of arrest or legal sanctions; the need to maintain financial support for their families; outstanding debts; fear of reprisals by the trafficking network and of deportation; language barriers.

97. With the exception of Belgium and the Netherlands, countries of destination fail to provide legal mechanisms which encourage women to report trafficking or slavery-like practices associated with prostitution to the police. In addition, trafficked women who are deported or return home receive only limited support from their own Governments and are in danger of revictimization by their communities at home:

> "When I came back to my own country it was very difficult for me because the Indian police had handed me over to the Nepalese police and the Nepalese police kept me in custody and summoned by family. I only have one older brother and sister. Both my parents have died. After four months the police officer called my brother and wanted to hand me over to him, but he did not want me. When I said I needed his help, he said you are a prostitute, so I do not want to take you home. Even he didn't inform my sister about me. In this way I spent two years in custody. I wanted to die because I was rejected by my family and I was totally helpless." 39/

A. Trafficking and forced prostitution as human rights violations

98. Conditions under which many trafficked women are forced to work, as described above, must be considered, without a doubt, to be within the realm of slavery and slavery-like practices. The Working Group on Contemporary Forms of Slavery of the Sub-Commission on Prevention of Discrimination and Protection of Minorities has identified trafficking, defined as a contemporary form of slavery, as one of its priorities. For whatever reason women are trafficked, they are frequently raped, beaten and psychologically tormented. Similar strategies have been documented as methods of torturers who target the individual victim and seek to disable the community to which the victim belongs, in the same way as traffickers utilize violence to terrorize victims of trafficking into submission.

99. Violations of the human rights of women associated with trafficking occur in both countries of origin and countries of destination. The international cross-border character of trafficking implicates two or more States, making the protection of the rights of trafficked women a difficult task. Countries of origin, many with a vested economic interest in and some with an official policy of promoting international migration, have little incentive to curb activities that may increase the generation of external revenue. It is estimated that the Government of the Philippines earns US$ 2 billion from remittances by overseas contract workers. Conversely, countries of destination associate high costs with the retention within their borders of individuals residing illegally in their territory and have no incentive to do more than deport trafficked women back to their home countries.

100. International human rights standards in general and the specific international legal regime devoted to trafficking provide useful legal frameworks for combating trafficking. Standards set by the International Labour Organization and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families are also relevant to trafficked women. The prevailing lack of adherence to the many legal obligations regarding trafficking in women, however, is at least partly a result of the diversity of mechanisms ascribing State responsibility. With no central international authority on trafficking in women, oversight has become fragmented and ineffective. As already mentioned, there exists general consensus among the international community that international standards with regard to trafficking need to be reviewed.

101. International initiatives in this connection have been made by the United Nations Educational, Scientific and Cultural Organization, in cooperation with the Coalition against Trafficking in Women, in drafting a convention on the elimination of all forms of sexual exploitation of women. In addition, the Global Alliance Against Trafficking in Women has proposed draft standard minimum rules for the treatment of victims of trafficking in persons and forced labour and slavery-like practices.

B. National laws on trafficking in women

102. Although efforts have been made to broaden the definition of trafficking to include other types of economic and social exploitation of women, the link

between trafficking in women and prostitution remains. Thus, definitions of trafficking and strategies that derive from such definitions must be interpreted in this context.

103. There are four identifiable legal paradigms that have been employed to address prostitution at the national level: prohibitionism; abolitionism; regulationism; and decriminalization. Prohibitionism seeks to punish any acts or persons involved in prostitution, including the woman herself. Although everyone involved in prostitution, including the women, clients and third parties, are subject to legal penalties, it is rarely the case that States enforce the laws against traffickers and/or clients.

104. Abolitionism was the system that predominated at the end of the nineteenth century when trafficking in women was first recognized internationally. Abolitionism calls for the elimination of laws on prostitution and rather than criminalizing the transaction between the prostitute and the client, the abolitionist strategy targets third parties such as pimps, brothel-keepers, traffickers and the Government. The long-term goal of abolitionism is the complete abolition of prostitution. Since, however, it is recognized that prostitutes are victims, the strategy employed to achieve abolition entails decriminalization of the prostitute. Although the 1949 Convention assumes an abolitionist approach, there is no State that has adopted a purely abolitionist policy.

105. Regulationism was the predominant legal paradigm in Western Europe until the late 1800s and still exists in many countries today, including Chile and Germany. Regulationism is characterized by official State tolerance of what is often understood to be a "necessary evil", by attempting to control prostitution through government regulatory schemes. Such schemes are either classically regulated by government authorities primarily through legally permitted brothels or by means of a neo-regulatory system whereby indirect mechanisms, such as taxes or mandatory health examinations, regulate prostitution.

106. The decriminalization paradigm views prostitution as work and seeks to decriminalize prostitution and the exploitation of prostitution by third parties. Decriminalization is focused on the coercion and violence rather than on prostitution itself and seeks to utilize labour laws to address working conditions and the rights of prostitutes. Whilst some proponents of decriminalization regard it essentially as a short-term measure to improve the position of prostitutes and women victims of trafficking, others strive for recognition in the long term of prostitution as a legitimate profession.

107. In many countries where prostitution is not a crime, the solicitation of clients is prohibited. In the United Kingdom, the law "seeks to prevent the serious nuisance caused to the public when prostitutes operate on the streets" by prohibiting soliciting, loitering and curb crawling. Norway proscribes "indecent behaviour" and Belgium prohibits "soliciting, taking someone to or bringing someone away from a place for the purpose of prostitution and promoting vice in public places by words, gestures, signs or publicity", and possession of condoms may be used as evidence of solicitation. The use of laws against loitering and curb crawling in countries like Ireland and the United Kingdom increases the danger of violence against prostitutes, since

they have less time to assess potential risks and negotiate safe sex. Such policies relegate prostitution to the private sphere where violence and abuse can be officially discounted.

108. The only places where work permits are reportedly issued to migrant prostitutes are Suriname, Aruba and Curaçao, which have governmental programmes through which migrants can legally enter the country to work temporarily as prostitutes. Although the application process is handled by the local immigration and police and is done free of charge to the women applying, the existence of exploiting middlemen has been documented.

109. Third-party assistance in illegal border-crossing is proscribed in countries seeking to protect their borders, including most countries of the European Union, the United States and Canada. Such legislation contains provisions on alien smuggling, aiding and abetting illegal entry, the production of fraudulent documents, hiring illegal workers, transporting illegal aliens and confiscation and forfeiture of property used in connection with alien smuggling. Migrants entering the country illegally or overstaying their visas are punished with imprisonment varying from six months to two years, fines and deportation. Some countries, such as Myanmar and Poland, also have legal proscriptions on leaving the country without permission or valid documents, thus subjecting undocumented migrant women to punishment both in the destination country and her home country upon return.

110. Laws often fail to account for the special circumstances that lead victims of trafficking into prostitution and many women are arrested and punished under laws on prostitution. Hundreds of women from the Dominican Republic, arrested during raids on nightclubs, are currently being detained in Switzerland and Italy.

111. The case of Hamida, 12, who had been trafficked from Bangladesh to India but escaped after she had been raped repeatedly by police officers at the brothel where she was forcibly prostituted, depicts the situation in which many trafficked women and girls end up. Hamida has been detained at Tihar jail in Delhi in "safe custody" for two years. She would like to leave but cannot find a way out. The five policemen who raped her have been released on bail. So far they have not been prosecuted. The trial against two of the three traffickers is repeatedly obstructed due, amongst other things, to the repeated absence of the public prosecutor. Meanwhile Hamida's interpreter and sole support was removed from the case because he was "developing a sympathetic corner for the victim" and is not allowed contact with Hamida, following a court order. Arrangements to send her back to her parents can only be made on instructions from the Home Ministry. Two years ago, the Bangladesh High Commission refused to admit her as a citizen, whereas it is now recognized that she is Bangladeshi. 40/

112. How national legislation is implemented by the criminal justice system essentially determines the nature and extent of trafficking in women. The Special Rapporteur's visit to Poland on the issue of trafficking of women from Central and Eastern to Western Europe provided useful information with regard to policies in countries of origin (see E/CN.4/1997/47/Add.1). One case to illustrate the point concerns the situation in Germany. 41/

113. The trial concerned the recruitment and coercion of Thai women into prostitution and ended after 11 months with the acquittal of the defendants on the charge of trafficking. The defendants were found guilty of promoting prostitution and procuring, offences that are considerably less heavily punished. Two of the women involved gave evidence that they were recruited in Thailand to work in a bar in Germany with the promise of DM 2,000/month to be earned exclusively by go-go dancing and encouraging guests to drink. On their way to Germany, in Denmark, they were forced to marry German men. Upon arrival in Germany they were told that they would have to pay back DM 15,000 in debts by prostitution. Other women were also taken to Germany, under similar conditions, having been promised work as waitresses and nannies.

114. From the beginning of the trial, the judge showed reluctance in pursuing the case by complaining about the expected length of the trial and the multitude of cases awaiting the court's attention. Throughout the proceedings, he was friendly towards the defendant and the defence counsel, while obviously sceptical towards the prosecutor and the plaintiff's counsel. The trial judge shared the defendants' view, not believing that the women had been forced, even though it was clear from the evidence that the women were left with no alternatives. In addition, the judge considered past records of the women in Thailand as relevant in deciding whether they could be victims of trafficking. During the cross-examination, every effort was made to attack the credibility of the women, a strategy replicated by the judge who on several occasions prejudged the issue and equated the women's past status to that of a prostitute.

115. Ignorance of Thai culture and translation difficulties lessened the credibility of the evidence provided by the women. It is worth noting that the Thai Government was not interested in the case. Successive calls for evidence were ignored and Thai authorities refused to allow a Thai police officer to be questioned.

C. State strategies to combat trafficking and forced prostitution

116. There are few noteworthy strategies undertaken by States to address trafficking. In response to pressure by non-governmental organizations, the Government of the Netherlands in 1988 amended the Dutch Aliens Law to provide protection to victims of trafficking willing to pursue prosecution, so that "... in the presence of the least suspicion of trafficking, a woman should be allowed time to consider pressing charges. When she has done so she should be allowed to stay in the Netherlands until the whole juridical process has been completed". 42/ As of 1993, the same protection against deportation was extended to witnesses willing to testify for the prosecution in trafficking cases. Belgium has a similar mechanism through which trafficked women willing to participate in the prosecution of their traffickers can stay in the country during the process.

117. The Netherlands has also created special police taskforces in larger cities to monitor the prostitution circuit. Additionally, in Amsterdam, a specific task force, comprised of two detectives from the vice squad, two officers from the aliens office, one assistant detective, one officer from criminal intelligence and one district officer, was established in 1993 specifically to address prostitution and trafficking. Considering the widespread abuse of prostitutes by the police, more information is needed before assessing the success of these mechanisms.

118. In Europe, at the regional level, recent initiatives by European organizations to combat trafficking have been taken. The European Parliament unanimously adopted a report and a resolution on trafficking in human beings in December 1995. In June 1996, the European Commission took the initiative of bringing together experts, non-governmental organizations, academics, law enforcement and immigration officials and government and parliamentary representatives in an effort to combat the problem of trafficking in women. The conference devised a programme of action and a set of recommendations to be adopted by member countries. In November 1996, the Commission of the European Communities in a communication to the Council of Europe and the European Parliament put forward proposals aimed at developing an integrated multidisciplinary policy with regard to the problem of trafficking in Europe. The communication pointed out that a special incentive and exchange programme for persons responsible for combating trafficking in human beings and the sexual exploitation of children is expected to be adopted soon. The programme, called "STOP", is awaiting budgetary allocation.

119. Non-governmental strategies have arisen primarily through direct contact with victims of trafficking and women migrants. Due to the clandestine nature of trafficking in women and forced prostitution, the extent of the problem remains hidden. Consequently, non-governmental organizations give priority to documentation and research. Another strategy employed by both Governments and non-governmental organizations targets victims both before they are trafficked and once they have arrived in the country of destination. Information campaigns have been utilized to provide general information through direct outreach and poster campaigns at points of departure and entry. The focus of these campaigns is to provide information about destination countries, situations of violence and abuse that may arise, migrant workers' rights and possibilities for support and assistance. Such strategies combine prevention strategies with practical intervention strategies. Non-governmental organizations in countries of origin and destination have established centres that offer assistance to women victims of trafficking. The support services include safe shelters, counselling, advocacy, health care, legal services and skill training to assist women to reintegrate into their communities.

120. Lastly, an important element of the work carried out by non-governmental organizations is long-term policy work to stimulate changes in State policies and practices with respect to trafficked women. The success of lobbying is to be seen in the Netherlands and in Belgium where non-governmental organizations have had an impact on State policy on trafficking.

V. VIOLENCE AGAINST WOMEN MIGRANT WORKERS

121. The Special Rapporteur notes that most of the information she has received relating to migrant women pertains to the situation of and violence against migrant domestic workers. In an earlier report (E/CN.4/1996/53), the Special Rapporteur identified violence against domestic workers as a form of domestic violence due to the perpetration of the violence in what has been traditionally defined as the "private" sphere. However, violence against women migrant workers also exists as a manifestation of community-based violence as, in many cases, the individuals perpetrating such violence have

neither a domestic relationship with the victim nor a formal State function. This blurring of lines between forms of violence against migrant women demonstrates the pervasiveness of all forms of violence against women.

122. Due to their double marginalization as women and as migrants, women migrants may easily find themselves in situations in which they are vulnerable to violence and abuse. Women migrants dominate the informal labour market of most countries, working as domestic, industrial or agricultural labour or within the service industry. The same conditions that lead to trafficking in women, as identified above, also stimulate migration by women. In fact, both trafficked women and voluntary migrant women may end up in comparable situations of exploitation, violence and abuse.

123. The situation of women migrants within most social structures is one of heightened marginalization, often exacerbated and implicitly condoned by the State. In Saudi Arabia, for example, all domestic workers must surrender their passports upon arrival. This official State policy increases migrant women's vulnerability to exploitation and abuse by institutionalizing employer control over the freedom of movement of domestic workers. "In astonishingly large numbers, women are migrating great distances across international boundaries to engage in poorly remunerated labour that isolates them in a subordinate position in a private realm, exposing them to acute risks of physical or psychological violence and to expropriation of their economic gain". 43/

124. The largely unregulated informal sector is the site of numerous violations of women's human rights. More than 2,000 cases of ill-treatment and abuse of migrant domestic workers in the United Kingdom have been documented. 44/ The abuses have included confiscation of passports, enforced change of contract, withholding of wages, deprivation of food and malnourishment, lack of access to medical and health services, imprisonment in the home of the employer, prohibition on engaging in social contacts, the interception of letters from home, and physical and sexual violence. The Anti-Slavery Society, in describing the conditions under which overseas domestic workers are forced to work in the United Kingdom, labelled the situation characterized by such abuse "domestic slavery".

125. Although reliable figures are difficult to obtain, according to a 1996 report by the International Labour Organization, approximately 1.5 million Asian women are working abroad either legally or illegally. Women account for approximately 60 per cent of all legal migrants, excluding seafarers, from the Philippines. In Sri Lanka, a survey conducted at Colombo international airport found that 84 per cent of migrant workers leaving the country were women and that 94 per cent of the women were migrating for domestic work. 45/

126. Live-in domestic work in countries of the European Union is a rapidly growing area of employment that is currently developing outside of labour regulatory schemes. The increasing demand is met mostly by undocumented migrant women, including Filipina, Moroccan, Peruvian, Dominican, Eritrean, Ethiopian and Eastern European women.

127. In Latin America and the Caribbean, domestic labour migration has an extensive history plagued by reports of violence and abuse. In Asunción,

there are roughly 15,200 domestic workers between the ages of 5 and 18 who have migrated from rural areas and work for free. Many of the girls receive education and accommodations in lieu of a salary. Such domestic arrangements increase their vulnerability to exploitation and violence. In Chile, many rural women migrate internally as temporeras (temporary female workers) to work primarily in the agro-export industry. Numerous violations of human rights have been reported in this sector, especially since prohibitions on women's right to organize are widespread. Additionally, temporeras are forced to work 12 to 14 hours a day, in extremely unhealthy conditions, exposed to high levels of pesticides, many of which have been banned in Northern countries and are then exported to the South, with little or no protection. Abnormally high levels of physical illnesses, including cancer, birth defects and death, have been linked to the exposure to pesticides. In its response, the Government of Chile has blamed the workers for not taking appropriate precautions.

128. Similar conditions and consequences are reported among Colombia's floristerias (female workers in the flower export industry) who are also exposed to pesticides. In Guatemala, internal women migrants either work as domestic labourers or work in maquilas (garment assembly factories). In order to encourage foreign investors, maquilas are exempt from regulations guaranteeing workers' rights; women are subject to sexual violence and harassment, forced overtime, intimidation and generally poor working conditions.

129. In Morocco, young rural girls are placed with wealthy urban families as domestic servants. Despite promises of education and a better standard of living, the girls are often subjected to inhumane working conditions and forced to live in a state of indentured servitude. This situation is exacerbated in cases of "adoptive servitude", in which wealthy families adopt orphan girls for the explicit purpose of providing labour and there are widespread reports of physical abuse of the girls. Conditions in Asian countries with migrant domestic worker populations, including Japan, Malaysia, Cambodia and Singapore and in Hong Kong, are often characterized by such abuse.

130. In countries of the Persian Gulf, the estimated 1.2 million domestic workers constitute 20 per cent of the estimated 6 million migrants on whom these countries rely heavily. Sri Lanka, Indonesia, India, and the Philippines are the primary sending countries to the Gulf region. The often violent and inhumane conditions in countries such as Saudi Arabia and Kuwait have been widely documented.

131. The unregulated and unprotected nature of informal labour translates into minimal or no legal protection for migrant women. In many cases neither labour codes nor laws providing benefits such as social security extend to migrant workers. As a result of her dependent status on the employer, the woman migrant worker loses her legal residence within the receiving country the moment she leaves the employer, even because of violent treatment. For example, neither the United Kingdom nor Malaysia allow migrant workers to change their employers. This has been described as a form of "State-sanctioned, indenture-like exploitation", in which the worker is compelled to stay in the sponsored position until either she leaves the

country or legal permanent resident status is granted. Overstaying a visa often results in severe penalties for the migrant woman, irrespective of her reasons or whether she knowingly overstayed.

132. The case of Helen Samuels. 46/ Helen ran away from her employer after enduring years of malnourishment, physical abuse and exploitation. At the moment of her escape she weighed about 41 kg and was suffering from malnutrition. There were whip marks and cuts and scratches all over her body. She successfully brought a case against her employers for assault, but was then served with a deportation order as an overstayer. She had only been given leave to stay for three months, and her employers had kept her for over three years. She was an illegal overstayer and thus liable to immediate deportation.

133. The key issue relating to legal status is the ability to escape from an abusive situation and seek other employment. Often women migrants, particularly domestic workers, do not have such freedom; this is compounded by the woman's social isolation. Mechanisms of support and assistance for migrant women in violent situations exist in some countries of destination but are often inaccessible to women migrants because of their lack of physical mobility, language skill or knowledge that these organizations exist. Many domestic workers in violent situations are forced to seek protection at the embassies of their home countries, most of which do not have adequate facilities or programmes to meet their needs. For example, an average of 75 women per day seek shelter in the Indonesian embassy in Jeddah, and it is estimated that 2,000 foreign domestic workers per year seek shelter in embassies in Kuwait. In April 1995, more than 200 domestic workers received shelter in the Embassy of the Philippines in Kuwait and 150 sought shelter in Sri Lanka's Embassy in the same month. One non-governmental organization has identified the following factors which restrict women migrants' ability to leave situations of forced labour: (a) the lack of alternate employment; (b) the lack of legal literacy, particularly in regard to workers' rights; (c) the financial obligations to her family and their dependence on her income; (d) the lack of financial resources; (e) the fear of deportation; (f) restrictions on her movement; (g) the lack of identity papers; (h) the fear of arrest; (i) violence by traffickers and employers; (j) debt bondage and the often concurrent fear of retaliation against her family for not paying debts; and (k) the fear of reprisals. 47/

134. Less visible, but similarly coercive, are abuses such as wage withholding. One study showed that 13 per cent of female domestic workers in Cuzco, Peru, receive no salary. 48/ In 1995, in a sweatshop in El Monte, California, inhumane measures were used to confine the workers, mostly Thai women. Passport seizure and armed guards were employed to hold the women and force them to work in slavery-like conditions.

135. Racism also fuels international trade in domestic workers. Reportedly, there exists a "hierarchy of nationalities" determining the type of employment and the salary that migrant workers receive.

136. The case of Alice, 25, former domestic worker. 49/ Alice, a qualified engineer from the Philippines, turned to a recruitment agency advertising posts as civil engineers and was required to pay a fee of 21,000 pesos (about

US$ 450) for arranging a professional post. Alice's parents mortgaged their small patch of land and she undertook to repay the rest of the fee on taking up her position. Interviewed and accepted, she left for Kuwait. Upon arrival at the recruitment agency in Kuwait City, she was informed that "for Filipina the work is domestic". Not being able to pay her airfare back or to pay the agency the fees she owed, she had no choice but to sign the contract as a domestic worker. In the 2½ years she worked for her employers, members of the Kuwaiti royal family, she had to work day and night without a day or time off.

A. International standards

137. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families sets out comprehensive standards with regard to the protection of migrant workers. Unfortunately, as of November 1996, only seven countries, all countries of origin, have ratified the Convention. The Convention, which therefore has not yet entered into force, inter alia prohibits torture against migrant workers (art. 10), protects against slavery or servitude and forced compulsory labour (art. 11). Article 16 specifically grants to women "effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions". Commentators, however, have pointed out that the Convention does not deal with the vulnerability of women migrants to prostitution and sexual abuse.

138. The Convention sets out minimum standards with regard to the labour conditions of migrant workers, remuneration, medical care and social security (arts. 25-30). It recognizes the right of migrant workers to form associations to protect their economic, social, cultural and other interests (art. 40) and ensures that the migrant worker receives equal benefits with regard to access to State educational and health services (art 41).

B. State strategies

139. Violence against migrant women has also provoked some countries of origin to implement protective policies, many of which, however, might actually harm women and increase their vulnerability to exploitation. Due to the poor working conditions and the often violent situations in which domestic migrant workers were forced to live, the Philippines banned the "maid trade" in 1988. The trade has since been re-established after the Philippines negotiated improved conditions, including minimum salary and terms of employment, with receiving States. In the Overseas Filipinos Act of 1995, the Government of the Philippines limits sending of migrant workers only to those countries where the rights of migrant workers are protected. Also, unskilled workers are not eligible since they are believed to be most vulnerable to abuse.

140. Policies implemented by sending States to protect the rights of migrant workers have led to the opening of new recruitment markets. In 1982, solo foreign labour migration by Bangladeshi women was banned by the Government of

Bangladesh due to concerns about the "low moral standards" of domestic workers. However, the resulting gap was quickly filled by agents who arranged sham marriages to Bangladeshi men who then escorted the women out of the country. At the request of Kuwait the ban was lifted in 1991. Furthermore, in response to the Filipino policy requiring employers to pay a minimum salary of US$ 200/month to Filipina housemaids, Bahrain has opened recruiting agencies in Ethiopia and Eritrea.

141. Rather than banning the trade altogether, some sending States have established programmes to ameliorate the position of female domestic migrant workers by, for example, establishing minimum age limits in an effort to reduce the risk of physical and sexual abuse. Indonesia requires a minimum age of 30 for women migrant workers leaving for the Middle East and has instituted compulsory language and cultural training for domestic workers migrating to that region. In Sri Lanka, the Government has taken steps to regulate the sending of migrant workers in its Overseas Employment Act of 1995, requiring that a prospective migrant worker must posses a "Certificate of Registration", issued only upon presentation of an employment contract, in order to leave. The Act also prescribes that overseas employers are required to cover the cost of travel and of medical benefits for the migrant workers.

142. Receiving States have also implemented various policies to both encourage and discourage the "maid trade". Singapore, in 1978, established a formal Foreign Domestic Maid programme to encourage educated women to assume formal employment. In an effort to protect domestic labourers against sexual violence, Malaysia banned the employment of maids by single parents. This policy, however, is not only misguided, as no apparent correlation between sexual violence and single parenting has been established, but also flawed due to its failure to account for the needs of single working mothers. Singapore levies a substantial tax on the employment of foreign domestic workers; none of the US$ 146 million per year generated by this taxation, however, is used to benefit the domestic workers. Many receiving countries have adopted immigration policies which reflect a xenophobic intention of keeping immigrants out and the severe penalties attached to illegal migrant workers often render them dependent on their employers and, therefore, more vulnerable to abuse and exploitation.

VI. RELIGIOUS EXTREMISM

143. Violence against women resulting from religious extremism is a troublesome phenomenon occurring in many societies throughout the world; it is not limited to a single religion or a group of countries but exists in various forms in different States. In discussing violence against women resulting from religious extremism, the Special Rapporteur does not intend to enter into intra-religious debates to discover whether the practices are actually sanctioned by the religion concerned. The Special Rapporteur is aware of the quantity of research carried out by human rights scholars within all religions with a view to proving that religion in itself does not sanction violations of human rights. This is why the Special Rapporteur, in her first report, accepted the position that the spirit of all the world's religions is protective of human rights but man-made customs and practices, often proclaimed in the name of religion, are sometimes discriminatory towards women.

144. In this context, the report is not interested in doctrinal debates about religion but only considers the effects of specific man-made practices and urges Government to legislate and implement programmes to eliminate such practices when they are violent against women. In making this appeal, the Special Rapporteur is mindful of the fact that the Declaration on the Elimination of Violence against Women clearly provides that "States should condemn violence against women and should not invoke custom, tradition or religious consideration to avoid their obligations" (art. 4).

145. The Special Rapporteur would like to recount only one of many examples provided in a report by a non-governmental organization on Afghanistan of violence against women resulting from religious extremism. 50/ "Turpeki was taking her toddler to the doctor. The child had acute diarrhoea and needed to be seen by a doctor soon. Turpeki was dressed in a burqa. She reached the market area when a teenage Taliban guard noticed her. The guard called her. Turpeki knew that if she stopped she would be beaten for appearing in public. She was also frightened that her child might die if she did not hurry. She began to run. The Taliban guard aimed his Kalashnikov at her and fired several rounds. Turpeki was hit but did not die. People intervened and took the mother and the child to the doctor. Turpeki's family then complained to the Taliban leaders, but were simply told that it had been the woman's fault. She should not have been appearing in public in the first place; once she did, she should stop when told to, and not run away".

146. In Afghanistan, in Taliban-controlled areas women are not allowed to work outside their homes or to leave their houses without having a reason acceptable to the Taliban. Regardless, they risk being caned or beaten if they are spotted on the road even if they are wearing a burqa. A woman from Kandahar told the non-governmental organization that there is no education and learning in the areas controlled by the Taliban. "All schools and educational centres are closed. There are no female doctors in Kandahar that I know of so we cannot even go to doctors ..." 51/ In Kabul, Afghan nurses who reported to work not wearing a burqa because it is impractical were dragged to a nearby tree by a 17-year-old Taliban militiaman and beaten. One who tried to escape was forced onto the floor and held between his feet while he beat her with a stick.

147. The offence of Zina as spelled out, for example, by the Hudood ordinance, which used to be in operation in Pakistan, is another case where religious extremism as interpreted by the State culminated in violence against women. Under the Hudood ordinance in Pakistan rape was an offence nearly impossible to prove, and if not proved, the same woman would be tried for the offence of adultery or fornication. A case in point is Safia Bibi, a blind girl who claimed that she was raped. She was also a minor who was pregnant. The Sessions Court found that Safia did not prove her rape since there were not four witnesses to her crime as required by the Ordinance. The Court, therefore, found the blind girl to be in violation of the Zina ordinance and sentenced her to three years' rigorous imprisonment. After national mobilization by Pakistan's women's organizations, the case went to the Federal Shariat Court and the Court set aside the judgement on technical grounds.

148. A woman's physical autonomy and her freedom to dress as she likes are also challenged in various societies. If she goes against community mores she

is very likely to be an easy target for violence and the community will believe that "she deserved it". Such violence is also sometimes directed at women who do not dress in a "feminine" way. In some countries, these so-called community mores are policed by the State. The Islamic Republic of Iran enacted a dress code for women called Hijab e Islam and non-conformism can lead to severe punishment. In addition, the community is encouraged to police itself with members of the community having a duty to warn or attempt to arrest women who are in violation of the code. Once a woman is arrested she could be subjected to 75 lashes but, at the discretion of the guards, she may only receive verbal abuse and be set free. The practice of abusing women who exercise the freedom of dress is justified by the Government and certain members of the community as being sanctioned by the holy texts.

149. Public flogging and stoning have long been recognized as punishments which violate the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In many countries, despite well-recognized international standards, the law codes as well as the courts continue to accord such punishment to both men and women. In the case of women, it is often for adultery or fornication, when women are seen as having transgressed the moral boundaries of the community. These punishments are justified by the lawmakers through recourse to their interpretation of religious texts.

150. In many societies, the treatment of widows by the community is often in violation of the human rights of women. In India, in certain areas, this treatment has extremely violent overtones. For example, the historic practice of women immolating themselves at the funeral of their husbands (Sati) and the religious glorification of sati shrines, although outlawed at present, still remain a matter of concern. In one celebrated case in Deorala, Rajasthan, Roop Kanwar and her 24-year-old husband had been married for less than eight months when he died in September 1987. Dressed in bridal finery, in front of 4,000 spectators, Roop Kanwar was burnt to death along with the body of her deceased husband on a funeral platform that had been erected in the middle of the village. The uproar created by this incident, especially since sati had been banned under British rule in 1825, resulted in the Government of India passing the Sati (Prevention of Glorification) Act.

151. However, the controversy in regard to this incident pointed to the high tolerance of a sati culture in some Indian communities. Pro-sati factions, despite being heavily contested, insist that the practice is religiously sanctioned. Moreover, although sati is outlawed, the State still appears to tolerate the many rituals and practices which glorify sati in different parts of India. The recent acquittal of the male members of Roop Kanwar's family who were responsible for her sati has made many observers sceptical, and would seem to indicate that the criminal justice system has failed to actively enforce the Sati Act.

152. The growth of Christian fundamentalist sects in certain countries has also created a climate in which violence against certain categories of women is justified. In the United States, where the right to have an abortion under certain conditions is interpreted by the Supreme Court as being constitutionally protected, certain Christian groups are involved in activism which results in justifying violence against those who are exercising a fundamental right under the Constitution. Death threats, stalking and arson

are some of the violent tactics employed by these groups, although a relative decrease in 1996 was observed. Some states, although not all, have attempted to prosecute this violence. The State of Massachusetts, for example, convicted John Salvi of murdering two abortion clinic receptionists, Shannon Lowney, 25, and Lee Ann Nicholas, 38, on 18 March 1996. Christian fundamentalist groups have also attempted to denounce many of the achievements of those who have fought for women's human rights. Pat Robertson, one of the chief ideologues of the Christian Coalition in the United States, recently stated that "the feminist agenda is not about equal rights for women. It is about a socialist, anti-family political movement that encourages women to leave their husbands, kill their children, practise witchcraft, destroy capitalism and become lesbians". 52/ Such "hate speech" against women activists in the name of religion is of great concern to all those who believe in the human rights of women.

153. The religions of the world are not the only belief systems that are relevant with regard to the position of women in society. In many countries, tribal practices outside the experience of world religions exist within certain communities which are violent towards women. The killing of women as witches has taken place at different times across many cultures in all regions of the world. In southern Africa and on the Indian subcontinent, for example, women are killed because they are believed to be witches. In the Singhbhum district of Bihar, India, on average 200 women are murdered every year because of this belief. 53/ Most of the victims appear to be widows who own land or women with unwanted pregnancies.

154. The Special Rapporteur does not claim that this section is an exhaustive study of cultural practices that are violent towards women, some of which are rooted in religious extremism. However, these are the practices which have been brought to the notice of the Special Rapporteur during her three-year tenure and seek to prove the important point that States have an affirmative obligation to confront those cultural practices of the community which result in violence against women and which degrade and humiliate women, thereby denying women the full enjoyment of their human rights. International standards require that there be concerted State policy to eradicate these practices even if their proponents argue that they have their roots in religious beliefs and rituals.

VII. RECOMMENDATIONS

155. States should be called upon to ratify, without reservations, international instruments relating to the human rights of women. Among the relevant treaties which deal with the question of violence against women in the community are the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

156. States should withdraw all reservations to international human rights treaties, in particular those relating to the human rights of women.

157. States should comply with their reporting obligations under international and regional human rights treaties and should include therein gender-disaggregated data and information on the situation of women, especially data relating to violence against women.

158. States should exchange information and training experience with regard to how their respective criminal justice system should confront the problem of violence against women in the community.

Rape and sexual violence against women, including sexual harassment

159. States should amend their penal codes to reflect recent research and findings with regard to sexual violence. Victim-centred definitions of rape should be broad enough to cover the full range of sexual violence and sensitive enough to capture the problems associated with the possible "consent" of the victim. Sentencing structures should be amended to ensure that perpetrators of violence are duly punished and that perpetrators of aggravated crimes receive severe sentences.

160. States should criminalize sexual harassment by appropriate amendments to penal codes. In addition, legislation and institutions relating to the problem of equality in educational institutions and the workplace should make provision for combating sexual harassment. Organizations and institutions providing education or employment should ensure that women victims of sexual harassment are allowed a proper hearing and that there is due process of law.

161. States should assess rules of evidence from a gender perspective and should revise evidentiary rules wherever such laws are found to discriminate against women such as, for example, evidentiary rules that require corroboration because the victim is a woman, or those that allow evidence of the victim's past sexual conduct to be revealed in court even though it has no relevance to the particular case being heard.

162. States should provide legal mechanisms for protecting the rape victim's identity and privacy during investigations and prosecutions. This protection should form part of the relevant legislation.

163. Judicial constructions of law, such as the need for corroboration with regard to rape in some common law countries or the "honour defence" in other systems of law, should be reviewed and legislated against if they discriminate against or denigrate women.

164. States should implement gender-sensitization and awareness-raising programmes at all levels of the police and the judiciary, integrating and making mandatory such programmes in police training courses and continuing legal education seminars or workshops for judges.

165. States should incorporate changes in school curricula to create attitudes which would help combat violence against women. States should incorporate mandatory gender-sensitization training in medical and legal education. In this regard, States should also implement gender-sensitizing

and awareness training for medical personnel working with victims of rape and other forms of violence against women, particularly State forensic pathologists.

166. States, in collaboration with non-governmental organizations, should allocate funds for victim support services, including shelters, legal assistance, medical assistance and counselling. Such policies should aim at creating "one-stop centres", whether at police stations or hospitals, where women victims may have access to the full range of services provided by the State and the community.

167. States that have restricted women's reproductive rights by limiting their access to abortion must lift such restrictions in cases of rape and take steps towards widening women's access to safe and legal abortions.

Trafficking and forced prostitution

168. The international community should begin a dialogue to work towards new international standards with regard to trafficking and prostitution. Such standards should be developed along with international mechanisms to ensure reporting and monitoring of State activities.

169. The problem of international trafficking in women can only be eliminated through regional and international cooperation. States should initiate special efforts to address this problem, including through regular exchange of information among the police and the judiciary in countries affected by such trafficking.

170. The immigration policy of receiving countries should be revised to prevent vulnerable women from being doubly marginalized. In addition, procedures should ensure that traffickers cannot act with impunity because of the immediate deportation of trafficked victims.

171. States should recognize that some macroeconomic policies have resulted in high rates of unemployment for women, leading to major problems in the area of trafficking and forced prostitution. Social policies should be constructed to ensure that marginalized women are given alternative avenues for their vocations and livelihood.

172. States should ensure that the police and the judiciary are sensitized to the issues concerned and are responsive to the magnitude of the social problem. Attitudes which denigrate women, especially vulnerable women subject to forced prostitution, should not hinder criminal prosecution of those who traffic in women.

173. In collaboration with non-governmental organizations, States should ensure that special services are made available for women victims of trafficking and prostitution. The provision of shelters, medical and legal assistance, training and counselling should be part of a general programme aimed at supporting women victims of trafficking.

174. State programmes with regard to health education should be strengthened, including awareness-raising on HIV/AIDS and, in particular, on women living with HIV/AIDS. Health facilities should be responsive to the general needs of women victims with regard to sexually transmitted diseases.

175. States should develop institutional mechanisms to combat complicity by police and immigration officers in the process of trafficking and forced prostitution of women.

Violence against women migrant workers

176. All States are called on to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

177. Sending States should establish migrant desks at their embassies or consulates to assist migrant workers, particularly those who are victims of violence. In addition, sending States should implement orientation programmes for migrant workers, whereby they are taught basic language skills, introduced to the culture in which they will be living, and provided with information on what to do in situations of violence.

178. Receiving States should prosecute employers abusing women migrant workers. In addition, laws and regulations that place women migrant workers in vulnerable situations, such as through the confiscation of passports, should be repealed. In addition, receiving States, with the collaboration of non-governmental organizations, should ensure that shelters and counselling services are available for women migrant workers who are victims of violence. Immigration authorities should be more sensitive to the needs of migrant workers, bearing in mind that their immigration status often makes them vulnerable to abuse.

179. Receiving States should combat racist laws and attitudes which dehumanize immigrant populations and develop strategies to ensure a more wholesome relationship between immigrant peoples and national residents.

Religious extremism

180. States should adhere to their commitment, as contained in the Declaration on the Elimination of Violence against Women, that they shall not invoke custom, religion or tradition to justify violence against women and should ensure the universal, indivisible and interdependent application of international human rights instruments in all States and societies.

181. Laws relating to criminal procedure and the criminal process should be made compatible with international standards. Torture, cruel, inhuman and degrading treatment or punishment, along with laws which prevent effective prosecution of rape and domestic violence sanctioned by religious interpretations should be repealed.

182. States should take the lead and ensure that traditional practices and rituals in the community which violate the human rights of women are

eliminated. Multi-pronged strategies involving law, education and the media should be implemented in order to assist in the transformation of attitudes and social practices.

183. States should clarify their political commitment to human rights norms, realizing that failure in this regard encourages extremist opinion to promote, introduce or justify community practices that are violent towards women.

Violence against women and reproductive health

184. All violations of women's reproductive health should be recognized and eliminated. The Programme of Action of the Cairo International Conference on Population and Development and the Beijing Declaration and Platform for Action of the Fourth World Conference on Women should be the starting point for such discussion. Strategies which aim at developing the sexual and reproductive autonomy of women should be encouraged.

185. States should adopt legislation regulating prenatal sex determination in order to eliminate discriminatory abortions of female foetuses. Customs and practices that promote son preference, devalue female children and encourage sex-selective abortions and female infanticide should be eliminated.

Pornography

186. Studies should be commissioned to assess the impact of new technology and the communications revolution on violence against women and of images portraying violence against women with a view to raising the awareness of the international community.

187. An international dialogue on developing strategies to combat images perpetuating violence against women should, without violating freedom of speech and expression, be developed so that international standards relating to pornography may be developed.

188. States, in collaboration with non-governmental organizations, should attempt to raise awareness about how certain categories of pornography are violent towards women and therefore unacceptable within the community. The concept of "hate speech" should be developed so that speech and expression which are violent and abusive to women become unacceptable in the community.

189. States, research institutions and non-governmental organizations should collect data and statistics on violence against women regularly and systematically in order to assess the extent of and make transparent and visible the problem of violence against women.

190. Educational curricula should be revised in order to develop sensitive attitudes with regard to violence against women at an early stage of children's development.

Notes

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